Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Walt Chappell	**Petitioner**
In Interest of A.M.K.	**A Minor Child**
vs.	
Linda Meese	**Respondent**
Robert Kabat	**Respondent**

On Petition for Writ of Certiorari to the Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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38 pp

QUESTIONS PRESENTED

There are ***four (4) compelling questions*** in this case which need to be settled by the U.S. Supreme Court. These questions deal with conflicting decisions made by various State Courts. Equal Protection and Due Process are denied to millions of fathers and their children every day by similar Orders. These issues need to be fairly resolved by this Court.

1) Under the National Uniform Parentage Act, ***HLA and DNA results are the "clear and convincing evidence" which overcome the marriage presumption of legitimacy to establish paternity*** when thousands of mothers or any State in America brings presumed fathers to Court during the first 18 years of a child's life. So, ***why was the genetic evidence from two separate blood tests, not found by the Colorado Courts to be conclusive when the Petitioner asked to be declared the legal father of his biological son?***

2) After he was found to be a good parent to his other three children by two District Court Judges and ruled the biological father of A.M.K., ***why did the State Court deny equal protection to the Petitioner by leaving the decision to A.M.K.'s Mother to decide whether and when the Petitioner would be allowed parenting time with his son?***

3) Three (3) pretrial hearings held before two different judges concluded that it was in the Child's Best Interest to establish his paternity. ***Why was Amendment V not upheld by a third judge who denied Summary Judgment, held a 4th hearing, and then decided that the Petitioner should NOT be declared the "legal father" of his biological son?***

4) ***Why were the Petitioner's Due Process rights denied by the Colorado Courts*** when (a) the Petitioner was not named a party to the original case to collect one AFDC payment, (b) no GAL was appointed in 1982 to represent the Minor Child, (c) 41% of the transcript was deliberately left out by the trial Court Reporter, (d) the child's home evaluation and school records were withheld, and (e) a surprise motion was granted which excluded the Petitioner's key witnesses?

LIST OF PARTIES

The Petitioner, Walt Chappell, Ph.D. is the biological father of the Minor Child A.M.K. He was the Petitioner in the 1989 Arapahoe County District Court case to establish his legal rights to parent his son. He was also the Petitioner to the Colorado Courts of Appeal and Colorado Supreme Court.

The Respondents are Linda Meese (aka Linda Celani), the mother of the Minor Child and Bob Kabat, the presumed father of A.M.K.

In this Petition, the parties will be referred to as the Petitioner and the Respondents and alternatively, by name or L.M. and R.K. The Minor Child will be referred to as A.M.K. throughout the Petition.

All emphasis has been supplied by the Petitioner unless indicated to the contrary.

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The Petitioner respectfully requests that a writ of certiorari issue to review the judgements below.

OPINIONS TO REVIEW

This case was originally filed in March, 1989. The Judicial process has been so slow, that it has taken 10 years to reach the US Supreme Court.

The most recent unpublished Denial of the Petitioner's Motion to Rehear by the Colorado Supreme Court is Appendix A. It is dated 4/30/99.

The April 12th, 1999 Colorado Supreme Court Denial of his Petition is unpublished. The text is shown in Appendix B. The Denial of Petition for Rehearing is Appendix C and is dated 11/19/98.

On August 27, 1998, the Colorado Court of appeals ***Vacated*** its Denial of Petition for Rehearing as shown in Appendix D. Copies of the April 23, 1998 and Modified Denial of Petitioner's Appeal are attached separately.

The 10/12/95 opinion of the Colorado Court of Appeals is cited as W.C. in Interest of A.M.K., 907 P.2d 719 (Colo.App. 1995).

Since the District Court Reporter deliberately tampered with 41% of the trial transcript used by the Colorado Courts of Appeal for their 1995 ruling---on October 25, 1996 the Colorado Supreme Court denied the Petitioner's Motion for a New Trial "without prejudice with leave to file appropriate pleading in Arapahoe County District Court." That Order is Appendix E.

STATEMENT OF JURISDICTION

1) The Colorado Supreme Court decided this case on April 12th, 1999.
2) A timely petition for rehearing was thereafter denied on April 30th, 1999.

3) On August 5th, 1999, the Clerk of the US Supreme Court granted 60 days to print this Petition in booklet form.

Therefore, the jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

The Petitioner requests this Court to exercise its discretion and to review the merits of this controversy as the opinion of the Supreme Court of Colorado has decided an important question of federal law that has not been, but should be settled by the Court and has also decided an important federal question which conflicts with decisions rendered by this Court and several other State Courts.

CONSTITUTIONAL & STATUTORY PROVISIONS

The Petitioner's right to equal protection under the laws and judicial due process are granted by the following Amendments to the United States of America Constitution.

Amendment V

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; ***nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb***; nor shall be compelled in any criminal case to be a witness against himself, ***nor be deprived of life, liberty, or property, without due process of law***; nor shall private property be taken for public use, without just compensation."

Amendment XIV

> **"Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. ***No state shall make or enforce***

> ***any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."***

In addition, the Uniform Parentage Act as amended by the Colorado Legislature to comply with the Federal Child Support Enforcement Amendments of 1984, was not enforced by the Colorado Supreme Court. The controlling Statute for determining the parentage of any child is the HLA and DNA genetic tests mandated in C.R.S. 19-4-112 and C.R.S.13-25-126(IV). These two statutes are quoted below.

C.R.S. 19-4-112. Genetic or other tests.

> "Upon motion of the court or any of the interested parties, genetic tests or other tests of inherited characteristics shall be ordered and the results received in evidence, as provided in section 13-25-126, C.R.S. Upon agreement of the mother and the presumed or alleged father or fathers, genetic tests or other tests of inherited characteristics may be administered prior to filing of an action. If the action is then filed, the test results shall be admitted into evidence as provided in section 13-25-126, C.R.S."

C.R.S. 13-25-126. Blood tests to determine parentage.

> ***"(IV) The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusion of the experts conducting the tests, as disclosed by the evidence based upon the tests, shows that the husband or wife is not the parent of the child."***

STATEMENT OF THE CASE

This is a paternity case brought by the Petitioner to establish a legal relationship with his biological son.

Petitioner Chappell has been denied his Right to Due Process, a Fair Trial and Equal Justice under the Constitution of Colorado and the United States of America. In the interest of Fair and Equal Justice, the Petitioner requests that he be declared the Legal Father of his son.

I. CASE SUMMARY:

Petitioner Chappell appealed to the Colorado Courts of Appeal after the Trial Court ruled that even though he is the biological father of A.M.K. and a fit parent to his other three children, he was a stranger to the Minor Child by the time of the 1991 Trial. The trial court also ruled that the Petitioner ***may*** have contact with his son once Respondent Meese decides it is appropriate. Respondent Kabat was named the legal father of A.M.K. The Court of Appeals upheld this ruling in 1995. The Constitutional issues raised by the Petitioner were not decided by the Appeals Court.

Since the Trial Court Reporter falsified and left out 41% of the transcript which she Certified to the Court of Appeal, the Petitioner tried for 5 years to get the District Court to make it "complete and accurate". The Colorado Supreme Court finally sent the case back to the District Court to complete the transcript in 1996 and to rule on the Petitioner's Motion for a New Trial. The Court Reporter was charged with criminally *Tampering with Evidence* in 1997 and just sentenced to 4 months in jail with a substantial fine.

Once the transcript was completed, the District Court held that the missing testimony would not have changed the outcome of the Appeal and claimed that it was "untimely" to deal with the 7 other major errors in the June, 1991 trial. Petitioner Chappell Appealed this ruling which was upheld by the Court of Appeals. The Colorado Supreme Court denied a review of the case.

II. FACTS GIVING RISE TO CLAIM:

From birth on January 9th, 1982, until age 3, the Petitioner was the Minor Child's "father figure". Walt Chappell and A.M.K. psychologically bonded as father and son and did many things together during frequent visits to the home of Respondent Meese, in the community of Boulder, Colorado and at the Petitioner's home a few blocks away.

During these three years, Respondent Meese (who was known at that time as Linda Celani) kept claiming that another man was the father of A.M.K. This man is Respondent Kabat who denied before and after birth that A.M.K. was his child and refused to see him.

***Bob Kabat moved out of the home he shared with Linda Celani* four (4) months prior to conception *and was living with another woman when A.M.K. was born*. *He has never lived in the same home with A.M.K. and Linda*.**

Bob Kabat requested and went to Immunological Associates of Denver for HLA blood tests, but Respondent Meese never came with her son. The Boulder County District Court did not enforce C.R.S. 19-4-112 which says that blood tests shall be ordered when requested. Yet, based only on the claim of Linda Celani, the Boulder Court assumed that Kabat was the child's father during a Child Support hearing in April of 1982.

Mr. Kabat was subpoenaed to Court by the State to collect $156 in AFDC payments and to force him to pay child support. There was no evidence presented that he is the biological father of the Minor Child. In addition, Petitioner Chappell was never made a Party to these 1982 proceedings as required by C.R.S. 19-4-110. Nor was a G.A.L. appointed for A.M.K. as required by C.R.S. 19-4-110.

Then, in 1985 the Petitioner took a 6 month overseas business trip. While he was gone, Linda Celani married a man named Meese and moved away from Boulder. After he returned from his trip, Petitioner Chappell moved to Kansas where he found baby pictures of himself which were identical

to those of A.M.K. He then realized that he needed to verify if A.M.K. was his child.

For the next three years, Walt Chappell searched for Linda Celani. Without knowing her new last name or where she moved, it was difficult to find her and A.M.K. until he took 2 weeks off and went back to Boulder to look for them.

Petitioner Chappell had no "clear and convincing" evidence that he was the biological father of A.M.K. until 1988, when he finally found Linda Meese and A.M.K. in Littleton, Colorado. He then paid to have HLA testing done in Denver. The results show that Walt Chappell has over a 99% probability of being the biological father of A.M.K.

Since October, 1988, Petitioner Chappell has been attempting to carry out his parental responsibilities and be named the Legal Father of his son. The US Supreme Court now needs to resolve this case.

REASONS FOR GRANTING THIS PETITION

I. EQUAL PROTECTION FOR FATHERS:

To assure Equal Protection under the 14th Amendment, the same ***DNA and HLA evidence*** used by 10's of thousands of Mothers and each State to determine Paternity ***must also be conclusive for biological fathers***. To rule otherwise, establishes two, unequal classes of litigants.

In this case, the Colorado Courts have not enforced the Equal Protection Rights of the Petitioner to be declared the "Legal Father" of his biological son and granted parenting time. Two immunological labs verified that, by over a 99% probability, Walt Chappell is the father of A.M.K. These same labs report that Respondent Kabat has a ***ZERO*** probability of being the Minor Child's father.

The Uniform Parentage Act (UPA) which was passed by Congress and adopted by all 50 State Legislatures provides the legal basis for the Courts to determine the parentage of a child. The controlling statutes in Colorado are C.R.S. 19-4-112, C.R.S. 19-4-113 and C.R.S. 13-25-126 in

which HLA, DNA and other genetic tests are the clear and convincing evidence of a child's parent.

Since this genetic evidence does not change after conception, it is used in thousands of cases each year where a child's Mother or the State wants to determine Paternity so that Child Support payments can be assessed to a specific man. However, in the instant case at Bar, the Colorado Courts have not enforced the UPA when the Petitioner attempted to assert his Equal Protection under the Law to be declared the legal father of his son and help parent his child.

When a Mother or the State brings the case, as long as the child is under 18 years of age, there is never any question of whether the newly named father is a "stranger" to his child. Once the genetic evidence is verified--Summary Judgement is granted without delay.

An example is People in L.J.III, vs. C.E.H. (Colo.App. #91CA1493). Ten (10) years after birth, People brought action which used HLA tests to show that husband, with whom the child had lived all 10 years, could not be the child's biological father. On appeal, respondent contended that the paternity action was barred by the five-year limitation period contained in C.R.S. 19-4-107(1)(b).

The Court of Appeals disagreed and stated:

"Furthermore, respondent's reliance on M.R.D. v. F.M., 802P.2d 1200 (Colo.App. 1991), for a contrary result is misplaced. In contrast to the facts here, the presumed father in that case sought to assert nonpaternity as a basis for affirmative relief, i.e. monetary damages. In the present case, respondent is challenging the adjudication of paternity which would establish his parental right, duties, and obligations in the context of a dissolution of marriage action. The judgment is affirmed."

At no time did either the Arapahoe County District Court or the Colorado Courts of Appeal conclude that there would be dire consequences to this 10 year old boy by declaring the nonhusband his biological father and disclosing this information to the child or public.

The Petitioner's case before you now was Appealed from the same District Court in the same year--1991. The Respondents used the same argument that the Petitioner was barred by the 5 year Statute of Limitations. The Colorado Courts obviously did not uphold the Petitioner's 14th Amendment, Equal Protection rights when they denied him Summary Judgment to be declared the Legal Father of A.M.K. Their decisions now needs the review of this Court.

II. PARENTING TIME:

In addition, the Equal Protection and Due Process rights of biological fathers for millions of American children to ***visit and help raise their own kids*** are not being enforced. Again, the Judicial emphasis is on assessing Child Support payments without enforcing time kids have with their dads.

Hundreds of thousands of American fathers are in the same legal position as the Petitioner. In 1991, the Trial Court ruled that Walt Chappell may have contact with his son, but left the decision to the child's Mother as to when and if this contact would be "appropriate". As of September, 1999, A.M.K. is 17 years old and his Mother still refuses to let him visit or phone the Petitioner.

Six child psychology experts who testified in the 1991 hearing or provided written advice to the Court all concluded that Walt Chappell should be reunited with his son as early as 1989. They advised the Court to have A.M.K. meet with a professional therapist as soon as possible. The purpose was to reunite the Petitioner with his Son by first letting the therapist state the factual truth that the Petitioner is his biological father, he has already meet him and his father is a warm, loving parent who is ready to help raise him. (See Summary of Expert Opinion in Appendix F.)

The Trial Judge ignored this expert advice. In fact, when the Court Reporter deliberately left out over 291 pages of testimony from the 1991, 3 day trial, she did not include any testimony from a leading child psychologist who specializes in reuniting children with their biological parents.

Dr. Leigh Baker was emphatic that A.M.K. be told the truth immediately so that no further psychological damage would be done to the child. She also testified that the reunion between the Petitioner and his Son should be done in the two weeks following the trial in 1991. Instead, Respondent Meese continues to lie to A.M.K. about who his father is. He found out on his own from Court papers in 1996. A.M.K. was furious and now distrusts most adults.

Because of this lack of Parenting Time enforcement by the Courts, millions of children in America are being used like pons in a high powered chess game. For example, a Mother may want to show her anger at the father or thinks she should get more money or finds it inconvenient or wants to get back at the father for some perceived emotional hurt. She then keeps the child away from seeing their biological father to show her power and make her point.

The Courts seldom do anything to stop this contempt of Parenting Time Orders. But, let the man who is responsible for paying Child Support get behind in his payments, and his wages are garnished. In some States men are put in jail to enforce back Child Support payments.

The Courts and Mother's often allow these same children to associate freely with any stranger the Mother brings home as a "date" or decides to have as a "live-in-lover" or Step Dad. But, for hundreds of thousands of American biological fathers, it is never "convenient or appropriate" in the Mother's eyes that they have quality parenting time. So the kids are without their own father's love and emotional support, while other men come and go in and out of their lives. Who is my "Dad" becomes a blur.

Recently, the Colorado Legislature amended C.R.S. 14-10-129 to add strength to the rights of non-custodial parents. The Legislature mandated that ***"A parent not granted custody of the child is entitled to reasonable parenting time rights..."*** This Statute also states that "***the court SHALL NOT restrict a parent's parenting time rights unless it finds that the parenting time would endanger the***

child's physical health or significantly impair the child's emotional development."

In the opinion of all the experts, allowing Walt Chappell--who was found to be a fit parent to his other three children and a Ph.D. in Education who has taught thousands of children from broken homes--would have a very positive impact on the emotional development of A.M.K. Their expert advice is supported by US Government, Foundation and University studies as well as the facts in this case. (See "Benefits of Involving Fathers" in Appendix G.)

III. DOUBLE JEOPARDY:

The 5th Amendment to the Constitution states that no person shall ***be subject for the same offense to be twice put in jeopardy of life or limb.*** In this Case, attorneys for the Respondents filed Motions to Dismiss the Petitioner's case each time a new Trial Judge was assigned to hear the Pleadings. They also repeatedly challenged previous Judges' decisions that it was in A.M.K.'s Best Interest to be reunited with Walt Chappell.

Getting each new Judge to hold a hearing on these same issues infringed on the Petitioner's 5th Amendment Right not to be in jeopardy of being denied his son's father more than once. Yet each time, the Respondents kept claiming that the Petitioner was beyond the 5 year Statute of Limitations and that it was not in the Child's Best Interest to declare Walt Chappell the Legal Father of his biological son.

The Domestic Court Referee who first heard the case Denied their Motion to Dismiss and transferred the case to the Juvenile Judge. On December 28, 1989, the new Judge again Denied the Respondents' Motion to Dismiss by finding that the UPA allows biological fathers to bring a case to establish their Paternity at any time up till the child's 18th birthday. (C.R.S. 19-4-108 and C.R.S. 14-5-128 were both Amended in 1988 to state "***THE COURT MAY ADJUDICATE THE PARENTAGE ISSUE AT ANY TIME PRIOR TO THE CHILD'S EIGHTEENTH BIRTHDAY.***

Since A.M.K. was relocated by the Petitioner in 1988 and was voluntarily included in HLA Blood testing by his Mother when he was 6 years old, it is obvious that there is not Statute of Limitations prohibiting the Petitioner from asserting his parental rights.

This Court has upheld the 18 year period for bringing cases to establish paternity by any interested party in at least three cases. In Pickett v. Brown, 462 U.S. 1 (1983) the Court found that the 2 year limit imposed by Tennessee denied Equal Protection to a Mother who wanted to establish the paternity of a man as the father of her child. The Court held that HLA and DNA evidence does not change.

Likewise, in Clark v. Jeter, 486 U.S. 456 (1988) and Paulussen v. Herion, 475 U.S. 557 (1986) this Court held that two more Mothers from Pennsylvania were protected by the 14th Amendment to bring their cases to establish paternity up till the 18th birthday of their children.

In the Colorado Courts, the same year the Petitioner's Summary Judgment motion was being heard, HLA and the 18 year period was also upheld in People J.S. v Holleron, 797 P.2d 806 (Colo.App. 1990). HLA tests were used 10 years after birth to establish that a non-married man was the child's biological father. "The Court of Appeals, held that 18-year limitations period applied to action."

The District Court's Summary Judgement declaring the biological father based on HLA evidence was upheld. Any interested party under C.R.S. 19-4-105(2) and 19-4-108 has right to bring a Paternity case to determine the existence or nonexistence of a parent-child relationship within 18 years.

Two more important cases similar to the Petitioner's were also decided in the Colorado Courts in 1990. The first was K.H.R. by D.S.J. & A.J. vs. R.L.S., 89 CA 0519 (Colo.App.-1990) in which a man holding out child as his own under 19-4-105(d) was overcome by HLA Blood Test data. **The District Court's Summary Judgement naming the biological father as the Natural Father was upheld.**

The second case was People in J.M.A. vs. P.L., 803 P.2d 187 (Colo.Sup.Crt.-1990) **The District Court's Summary Judgement was upheld when the Paternity ruling was based on HLA testing evidence.** P.L. failed to show any material issue of fact to show that he was not the biological father. No statute of limitations barred the District Court's decision.

Even with these recent Court rulings, the Respondents kept refiling Motions to Dismiss and to delay blood and psychological testing throughout 1990. They succeeded in dragging out the case until a third Judge was assigned in 1991 and once again filled their Motion to Dismiss.

The second trial Judge had already held (3) Pre-trial Hearings as called for in C.R.S. 19-4-114 and each time ruled that it was in A.M.K.'s Best Interest to proceed to rule on the Petitioner's Summary Judgment Motion to be declared the Legal Father of his son. Yet the 3rd trial Judge denied the Petitioner's Motion for Summary Judgment and found that by 1991, the Petitioner was a "Stranger" to his son. Contrary to the 1990 Colorado Court of Appeals rulings, she also ruled that Respondent Kabat would remain the "Legal Father".

By misusing the Judicial system to file repeated Motions to Dismiss, the Respondents attorneys denied the Petitioner his 5th Amendment rights. And, to keep challenging the Best Interest decisions of previous judges until a third judge ruled that W.C. was a "stranger" to his son, is also unconstitutional.

The Petitioner was not a "stranger" to his son the first three years of A.M.K.'s life. Nor was the Petitioner a "stranger" to his son when they reunited in 1988 at age 6. There was instant recognition of Walt Chappell by A.M.K. They spent 3 days together and camped out on the living room floor when A.M.K. sneaked out of his room each night to sleep beside Walt Chappell. A.M.K. stuck to his Dad like glue. Respondent Meese and A.M.K. even asked Walt to stay with them longer rather that go back to his home in Kansas.

There are reportedly over 800,000 children in America who have been kidnapped by one of their parents who does not want to share parenting time with the other parent. In some cases, the Courts have issued arrest warrants for these "kidnappers".

This Court would never rule that once these children are found, they should not be allowed to reunite with the parent from whom they were kidnapped--because that parent is now a "stranger"!! That would be unjust and cruel. But that is basically what happened to the Petitioner in this Case when he finally relocated his son and the 3rd Judge made a final decision against his involvement in A.M.K.'s life.

The same unjust decision is made when biological fathers are not informed that their child is going to be put up for adoption. By the time they relocate and take legal action to defend their right to raise their own child, the Adoptive parents claim that the child should not be removed from their home because he/she is now a "stranger" to the biological father. This has happened to biological Mothers as well.

So, until O'Connell v. Kirchner, ____U.S.___(1995) thousands of Adoptive parents or custodial Mothers could keep children away from biological fathers by hiding the kids or delaying the Judicial process and claim that it was in the Child's Best Interest not to let the father have parenting time because he was now a stranger. Now that this Court has upheld the Illinois Supreme Court and preserved Otakar Kirchner's Due Process rights to parent his Boy Richard, it is much harder for these rights to be taken away from other biological parents.

In the instant case, this Court is respectfully asked to again enforce Petitioner Chappell's rights to parent his own son and not reward the Respondents for dragging this Case out three years after the HLA blood test results were known. For the Appeal Process to take another 7 years out of A.M.K.'s formative years is also a tragedy which a review of this case by the Court will help prevent for other fathers and their children.

IV. DUE PROCESS DENIED:

The State Courts are more interested in asserting that at least one man is going to pay the financial support for each child than to first have genetic testing done to verify that they have found that child's natural father. Assessing child support before determining paternity is unjust and unconstitutional.

This Court found in Little v. Streater, 452 U.S. 1 (1981), that the 14th Amendment right to Due Process was violated when Child Support was assessed to a man before HLA testing was done. Likewise, In Re Marriage of Burkey 689 P.2d 726 (Colo.App. 1984) it was ruled that "if the U.P.A. is not followed, then the District Court Order finding the ex-husband to be the presumed father is VOID"-- especially when a GAL is not appointed to represent the Child in the Dissolution or Child Support Action.

Similarly, In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990), the Court found that when a paternity issue is raised in conjunction with a determination of child support under the Uniform Dissolution of Marriage Act, the court must determine whether the party to be charged owes a duty of support according to the procedures of the U.P.A. If no genetic tests are done or GAL appointed for the child, then the Child Support ruling is ***void***.
Applied in Petition of G.D., 775 P.2d 90 (Colo. App. 1989); People v. Holleron, 797 P.2d 806 (Colo. App. 1990); M.R.D., by P.D. v. F.M., 805 P.2d 1200 (Colo. App. 1991).

With such a large number of broken families and non-marital relationships between men and women in America, it is not possible for many women to know who is the biological father of their child. Too often, the State arbitrarily claims that a specific man is the father of a child and therefore responsible for child support without first appointing a GAL and Ordering genetic testing.

Likewise, getting a man who comes to a birth to sign a form at the hospital claiming to be the father without doing genetic tests is unethical and not accurate. This man does not

know how many other men were having intercourse with the child's mother when she became pregnant.

In a recent study, it was found that ***18% of men who "admit" to being a child's father are wrong***. "Blood--Grouping Tests in Undisputed Paternity Proceedings", Sussman and Schatkin, Journal of American Medical Association, Vol. 164, No. 3, page 249. (See Appendix H) Other research suggests that this number may be over 30%.

This is exactly what happened in this Case. Respondent Kabat moved out of the home he shared with Linda Celani ***four months before*** A.M.K. was conceived. To keep his furniture, Linda filed a Petition for Divorce claiming that they had been living in a common-law marriage.

Linda Celani never said to Petitioner Chappell during the 5 years between 1980 and 1985 that she was married to Mr. Kabat. Yet both the Boulder and Arapahoe District Court used the marriage presumption to rule that Respondent is responsible for child support and is A.M.K.'s legal father.

In fact, Respondent Kabat was living with another woman at the time A.M.K. was conceived. He has a son from that relationship who was born 6 months after A.M.K. That child was immediately abandoned by Bob Kabat. He has not paid child support or seen his own biological son since 1982, yet was declared to be A.M.K.'s legal father by the Colorado Courts.

In spite of the lack of any evidence, the Boulder County District Court took a Social Worker's word as fact when she and Linda Celani claimed that Bob Kabat was A.M.K.'s father. The State of Colorado was more interested in collecting the $156 in AFDC payments it had given Linda Celani than to enforce the request which Respondent Kabat made to get the HLA blood tests done in April, 1982. He was subpoenaed in March to Boulder County District Court in the Child Support case, yet the Court imposed Child Support payments on him the next month without knowing if he was A.M.K.'s father.

The Petitioner asked before and after the birth if he was A.M.K.'s father but each time, Linda Celani claimed that Bob Kabat was the father. Not once did she tell Petitioner Chappell that Mr. Kabat had requested blood tests. Kabat always claimed that he was not A.M.K.'s father but eventually agreed to pay child support when Court ordered.

(NOTE: After this ruling, Mr. Kabat continued to deny that he was the Father of A.M.K. and did not spend time with the baby. So, *from birth to age 3, A.M.K. bonded with Walt Chappell as his father figure during the Petitioner's frequent visits to the home of Linda Celani.)*

Under the UPA, which is mandated by the US Congress for all states to follow, the Petitioner should have been named a party to the paternity issue before child support was forced on Mr. Kabat. Likewise, since no GAL was appointed for A.M.K., both the parentage and support rulings are void. (C.R.S. 19-4-110)

For the Colorado Courts to ignore these statutes and case law in the instant case shows their disregard for the Petitioner's Due Process Constitutional rights.

There is no greater responsibility for a man than to be a caring father to the children he brings into this world. The Courts are mandated to enforce this Constitutional right and responsibility for all biological fathers.

Unfortunately, biological fathers are often kept from their children when the Courts ignore the fact that many mothers never allow their children to spend time with their dads. In the 10 years since this case was filed, Linda Meese has still not allowed A.M.K. to visit with or see Walt Chappell. This has caused great hardship on A.M.K.

A.M.K. is now 17 years old and still going through great turmoil at home. Like three of his other brothers, he ran away from the home of Linda Meese repeatedly. Twice she sent him to live with Bob Kabat and both times this living arrangement did not work. So, by December, 1997, A.M.K. was taken out of high school during his Sophomore year and has not been re-enrolled by his mother since.

Motions by the Petitioner to Establish Visitation and help get his son enrolled in high school were denied by the District Court. The Petitioner and A.M.K. reunited with the help of his older brothers during the Summer of 1998, but still the Court would not allow Walt Chappell to have parenting time with his son without the prior approval of A.M.K.'s mother. She is still in denial and refuses to allow A.M.K. to visit the Petitioner.

So, in December 1998, A.M.K. ran away from home again. Petitioner Chappell was contacted by A.M.K.'s older brothers to see if A.M.K. could come live in Kansas with the Petitioner. They also turned in Linda Meese to Arapahoe County Child Protective Services for her abusive behavior toward A.M.K. The District Court still did nothing to help.

A.M.K. finally ran out of places to stay and came back to live with his mother. Within a few weeks, A.M.K. got so depressed that he got drunk, took a pistol and killed a neighbor's dog. He has been to Court, served time in jail and is now on Probation.

This is the human side of Judicial indecision. Children suffer when they do not have the love and emotional support of both parents. Biological fathers can help raise responsible citizens, but the current lack of enforcement of the UPA and Parenting time by the District Courts in America is creating major psychological problems for millions of American children

The US Supreme Court can use this case to instruct lower Courts to uphold the rights of biological fathers to parent their children It is time to allow children to have both parents in their life. (See "Benefits of Involved Fathering" in Appendix G)

The US Supreme Court has examined the extent to which a natural father's biological relationship with his child receives protection under the Due Process Clause in at least three cases: Stanley v. Illinois, 405 U.S. 645 (1972), Quilloin v. Walcott, 434 U.S. 246 (1978), and Caban v. Mohammed, 441 U.S. 380 (1979).

Stanley involved the constitutionality of an Illinois statute that conclusively presumed every father of a child born out of wedlock to be an unfit person to have custody of his children. The father in that case had lived with his children all their lives and had lived with their mother for 18 years. There was nothing in the record to indicate that Stanley had been a neglectful father who had not cared for his children. 405 U.S., at 655. Under the statute, however, the nature of the actual relationship between parent and child was completely irrelevant. Once the mother died, the children were automatically made wards of the State. Relying in part on a [463 U.S. 248, 259] Michigan case recognizing that the preservation of "a subsisting relationship with the child's father" may better serve the child's best interest than "uprooting him from the family which he knew from birth," the Court held that the Due Process Clause was violated by the automatic destruction of the custodial relationship without giving the father any opportunity to present evidence regarding his fitness as a parent.

In the case at bar, Petitioner Chappell has been found by 3 separate Judges to be a fit parent and the biological father of A.M.K. Yet, the Colorado Supreme Court let stand the District Court ruling which gave A.M.K.'s Mother the final decision about when the Petitioner would be allowed to visit and help parent his son. The Mother has never allowed A.M.K. to visit, even though the District Court has twice Ordered that A.M.K. may have contact with the Petitioner.

Quilloin involved the constitutionality of a Georgia statute that authorized the adoption, over the objection of the natural father, of a child born out of wedlock. The father in that case had never legitimated the child. It was only after the mother had remarried and her new husband had filed an adoption petition that the natural father sought visitation rights and filed a petition for legitimization. The trial court found adoption by the new husband to be in the child's best interests, and the US Supreme Court unanimously held that action to be consistent with the Due Process Clause.

However, Petitioner Chappell was never made a party to the 1982 Boulder County District Court case which declared that Bob Kabat was A.M.K.'s father. Nor was an adoption done. No genetic evidence of paternity was every entered nor was a GAL appointed for A.M.K. So, Due Process was denied to the Petitioner, Bob Kabat and A.M.K.

Caban involved the conflicting claims of two natural parents who had maintained joint custody of their children from the time of their birth until they were respectively two and four years old. The father challenged the validity of an order authorizing the mother's new husband to adopt the children; he relied on both the Equal Protection Clause and the Due Process Clause.

The difference between the developed parent-child relationship that was implicated in Stanley and Caban, and the potential relationship involved in Quilloin and this case, is both clear and significant. When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "coming forward to participate in the rearing of his child," Caban, 441 U.S., at 392, his interest in personal contact with his child acquires substantial protection under the Due Process Clause.

The actions of judges neither create nor sever genetic bonds. "The importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in `promoting a way of life' through the instruction of children . . . as well as from the fact of blood relationship." Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977) and Wisconsin v. Yoder, 406 U.S. 205 (1972).

The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the

blessings of the parent-child relationship and make uniquely valuable contributions to the child's development.

Petitioner Chappell was the "father figure" for A.M.K. for the first three (3) years of his life. Psychological bonding occurred between A.M.K. and Walt Chappell during the Petitioner's frequent visits to the home of Linda Celani.

Respondent Kabat was seldom with A.M.K. during these early years. Mr. Kabat has never lived in the same home with A.M.K. and Linda Meese. She has been remarried to different men at least twice since A.M.K. was born and dated frequently. So, A.M.K. has spent far more time with these "strangers" than with Mr. Kabat.

After relocating Linda Celani and A.M.K. in 1988, Petitioner Chappell asked for and paid the cost of HLA blood testing on all three people. As soon as the positive HLA test results were known in October, 1988, Petitioner Chappell has made consistent efforts to help raise A.M.K. Rather than run away or deny his responsibilities, Petitioner Chappell, like Stanley and Caban has worked hard to reunite with his son and be a caring father.

In addition to the issues raised above, the Petitioner's Due Process rights were denied by the Colorado Courts when 41% of the transcript was deliberately left out by the trial Court Reporter, the child's home evaluation and school records where withheld, and a Respondents' surprise motion was granted which excluded Petitioner's key witnesses.

In addition, prior to the 3rd day of trial and hearing expert testimony, the trial Judge held an ex parte conference in her chambers with the Respondents' attorneys. A few minutes later, she came back into the Courtroom and stated on the Record that she wanted these attorney's to present a bill for their time. This Judge later assessed the Petitioner with excessive legal fees which the Respondents had accumulated over 3 years of delays, in the amount of $22,000. The Petitioner was fined instead of thanked for trying to be a responsible father to his child.

There has been no justice in this case. Not only has A.M.K. suffered psychologically damage from being lied to plus the 10 years of legal delays, but the Petitioner has been assessed an excessive $22,000 fine for trying to assert his constitutional rights.

In a time when our Nation is trying various means of persuasion to keep fathers involved in the lives of their children, it seems this Court needs to state the obvious---when a biological father like Walt Chappell comes forward to be a responsible parent to his child---do not deny him his Equal Protection and Due Process rights and then fine him for "doing the right thing".

Kids need their dads. And, biological fathers have an Equal, Constitutional Right to parent their children.

CONCLUSION

Hundreds of thousands of American fathers who are in similar circumstances also need the US Supreme Court's clear ruling on this case. These are important national issues which this Court can decide which will free millions of American children to spend more quality parenting time with their dads. If even one Columbine High School shooting is avoided by this added love and emotional support from American fathers, this case will be well deserving of your judicial review.

The Petitioner therefore requests that this Court, after merits review, grant the Petitioner's Motion for Summary Judgment and declare the Petitioner the Legal Father of A.M.K. with full rights and responsibilities to parent his son.

Respectfully submitted,

Walt Chappell

Walt Chappell, Ph.D.
Pro se Petitioner
Box 776
Wichita, KS 67201
(316)838-7779

Date: 9/30/99

APPENDICES

APPENDIX A---DENIAL OF MOTION TO RECONSIDER, DATED APRIL 30, 1999

SUPREME COURT, STATE OF COLORADO
CASE NO. 98SC870
CERTIORARI TO THE COLORADO COURT OF APPEALS, 97CA0666
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C.	Petitioner
In Interest of	A.M.K., Minor Child
v.	
L.M. and R.K.	Respondents

Upon consideration of the Motion to Reconsider filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, DENIED.

BY THE COURT, APRIL 30, 1999

s/ Mac V. Danford
Clerk of the Supreme Court

APPENDIX B---DENIAL OF PETITION FOR WRIT OF CERTIORARI, DATED APRIL 12, 1999

SUPREME COURT, STATE OF COLORADO
CASE NO. 98SC870
CERTIORARI TO THE COLORADO COURT OF APPEALS, 97CA0666
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C.	Petitioner
In Interest of	A.M.K., Minor Child
v.	
L.M. and R.K.	Respondents

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petitioner for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, APRIL 12, 1999

s/ Mac V. Danford
Clerk of the Supreme Court

APPENDIX C---DENIAL OF PETITION FOR REHEARING, DATED NOVEMBER 19, 1998

THE COURT OF APPEALS
OF THE STATE OF COLORADO

Case Number 98CA0666

ORDER

W.C. IN THE INTEREST OF A.M.K.,

Upon consideration of the Petition for Rehearing filed by the Petitioner-Appellant Modified and as Modified, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed to and including December 21, 1999 provided that if a petition for Writ of Certiorari is timely filed with the Supreme court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT:

Criswell, J.
Jones, J.
Taubman, J.

Dated: November 19, 1998

APPENDIX D---VACATE THE DENIAL OF PETITION FOR REHEARING OF NEW TRIAL MOTION, DATED AUGUST 27, 1998

COLORADO COURT OF APPEALS, 97CA0666
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C.	Petitioner
In Interest of	A.M.K., Minor Child
v.	
L.M. and R.K.	Respondents

The order denying Petitioner's Petition for Rehearing, dated August 13, 1998, was issued inadvertently and without full consideration by the division.

Hence, that order of denial is HEREBY VACATED and a new order respecting this subject shall issue in due course.

Dated this 27 day of August, 1998.

BY THE COURT:

Criswell, J.
Jones, J.
Taubman, J.

APPENDIX E---DENIAL WITHOUT PREJUDICE OF MOTION FOR A NEW TRIAL, DATED OCTOBER 24, 1996

SUPREME COURT, STATE OF COLORADO
CASE NO. 96SC77
CERTIORARI TO THE COLORADO COURT OF APPEALS, 91CA1628
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C.	Petitioner
In Interest of	A.M.K., Minor Child
v.	
L.M. and R.K.	Respondents

Upon consideration of Petitioner-Appellant's Motion for a New Trial in Arapahoe County District Court filed in the above case, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion be, and the same hereby is, DENIED without prejudice with leave to file appropriate pleading in Arapahoe County District Court.

BY THE COURT, EN BANC, OCTOBER 24, 1996
Judge Vollack does not participate.

s/ Mac V. Danford
Clerk of the Supreme Court

APPENDIX F—EXPERT OPINION SUMMARY
Presented to the Colorado Courts

1) December, 1988, Dr. Warren Baker, Founder and Director of the Denver Family Center informed W.C. that A.M.K. should be told the truth of this paternity as soon as a child psychologist could meet with the child. Visitation in W.C.'s home in Kansas should begin in 1989 to help A.M.K. get reunited with W.C. and see his home in reality rather than as a myth in the child's imagination.

2) On June 28, 1990, Dr. Edward Steinberg, a Court Appointed Clinical Psychologist wrote J. Leopold...,

***"I believe that the child's best interests would be served by his having information regarding the identity of his biological father--further, I believe my opinion to be well within the generally recognized consensus held among mental health professionals."* (E2,22)**

3) In his March 25, 1991 letter to Judge Leopold, Dr. Robert Handley, Court Appointed Child Psychologist wrote...

***"These recommendations were not intended to block Mr. Chappell's contact with Aaron. Mr. Chappell may be quite capable of playing a beneficial role with Aaron."* (E2,6)**

4) On June 3, 1991, national known Clinical Psychologist, Dr. Dennis H. Karpowitz wrote....

"As I read the lengthy report of Dr. Handley, it certainly appears that Aaron Kabat could benefit from regular contact with you. This contact should begin as soon as possible. Aaron should be told simply and matter-

of-factly that his biological father has been verified. He should be told that he has already met his biological father, and his biological father would like to have regular contact with him. Contacts should begin with brief visits of a day or so and then increase to more lengthy contacts. This situation need not change the contact Aaron has with Mr. Kabat. See Erikson, 1963, Lamb, Lindsay, 1987, 1982: Schiamberg, 1988." **(E2,27)**

5) **During her June 12, 1991 testimony in Court before J. Joyce Steinhardt, Child Psychologist, Dr. Leigh Baker stated:**

"The child – I think the child should be in therapy as soon as possible. They should begin the process as soon as information (establishing the biological parent) is known."

In response to a question about how soon the biological father (W.C.) should be reunited with his son, Dr. Leigh Baker testified that....

"...a rule of thumb is that we need to try to do the reuniting as soon as therapeutically possible, that there is contact in a therapeutic situation – session -- as soon as that's indicated, we try to. I'm for that." **(V10,92,L10-14)**

6) **As far back as June 11, 1990, the Court Appointed GAL, Mr. John Prentiss filed a Recommendation for Mental Health Professional with the District Court in which he wrote...**

"1. It is the belief of the Guardian ad Litem that the issue in this paternity case is so sensitive to the emotional well-being of this minor child that a court appointed expert is necessary to facilitate uniting this child with his biological father, as well as providing the Court with information as to how this can be accomplished, taking into consideration the best interests of the minor child." **(V1,139)**

APPENDIX G
BENEFITS OF INVOLVED FATHERING

Children who have involved and responsive fathers benefit from the following:

- Children are much more successful academically, and have a higher likelihood of going to college *(Kurdek and Sinclair, 1988)*.
- Involved dads have a positive correlation to reduced adolescent pregnancy *(U.S. D.H.H.S & Bureau of the Census)*.
- Young people who have fathers actively participating in their lives are less likely to engage in criminal activities or abuse drugs and alcohol *(National Center for Health Statistics)*.
- Father involvement is the strongest parent-related predictor in the development of empathy *(Koestner, Franz & Weinberger, 1990; Miedzian, 1991; Sagi, 1992)*.
- Involved fathering is associated with the development of problem-solving behavior and reduced sibling conflict and aggression *(Easterbrooks & Goldberg, 1984; Volling & Belsky, 1992)*.
- Sons and daughters are much less likely to have traditional sex-stereotyped perceptions about male and female roles, i.e., they grow up more open-minded about what men and women are capable of doing *(Pruett, 1987; Radin & Russell, 1983)*.
- When divorce or separation occurs, fathers who have consistent access and contact with their children show a 90% compliance in child support payments, versus 44% for dads who don't or can't have this contact *(U.S. Bureau of the Census)*.
- Involved fathers lessen the burden that mothers experience when moms are the exclusive caregivers to their children.
- Children with two loving, involved parents benefit from the wealth of each parent's life experiences.

APPENDIX H
MEN WHO "ADMIT" PATERNITY ARE OFTEN WRONG

A rather sobering reminder from one study which found that about one in five expectant "fathers"---aren't!

"***Blood--Grouping Tests in Undisputed Paternity Proceedings***", Sussman and Schatkin, Journal of American Medial Association, Vol. 164, No. 3, page 249.

In summation...Paternity litigants in 67 cases submitted to blood testing AFTER the men voluntarily admitted to paternity. By using the A-B-O, M-N and Rh-Hr blood typing systems, it was found that 12 0f the 67 men who admitted paternity were probably NOT the actual fathers. That's 18%!!!

Other studies suggest that over 30% of men who were named as the father by mothers after they started receiving AFDC payments, are not the biological father. HLA blood testing is seldom done, especially if a man is asked to claim paternity at the hospital when the child is born. He does not know and neither does the mother. Yet once his signature is on the line, the Court assumes that he is responsible for child support without HLA or DNA evidence to confirm.

A father-child biological relationship must be confirmed FIRST---then assess child support payments. And, once a Father is identified, he should be allowed to help raise his child without Court interference or Custody battles with the Mother. Children need both biological parents as active participants in their growth. It is not up to the Father to pay money and then seldom see his child or have an opportunity to raise his child into a mature, responsible adult.

The Courts need to assure the rights of Fathers--just as much as those of the child and Mother--to help heal our Nation and rebuild families. Hiding children from their biological fathers has got to stop.

(2)

Supreme Court, U.S.
FILED

991135 JUL 29 1999

No. _____

OFFICE OF THE

In The

Supreme Court of the United States

Walt Chappell — **Petitioner**
In Interest of A.M.K. — **A Minor Child**

vs.

Linda Meese — **Respondent**
Robert Kabat — **Respondent**

On Petition for Writ of Certiorari to the Colorado Supreme Court

SUPPLEMENTAL APPENDIX

APPEN.	DESCRIPTION
A--p.3 10/12/95	Colorado Court of Appeals--Opinion denying that Walt Chappell is the legal father of his biological son, A.M.K. under the Uniform Parentage Act.
B--p.11 01/11/96	Colorado Court of Appeals--denied Rehearing
C--p.12 07/29/96	Colorado Supreme Court denied Paternity Writ
D--p.13 10/01/96 ***** *****	Arapahoe County District Attorney finds evidence and charges the Court Reporter with falsifying and leaving out **41%** of the Trial Transcript on Appeal. (Note: Sandra Kay Noblitt has plead guilty to the charges, sentenced to 4 months in jail and must pay a substantial fine. The Colorado Court of Appeals did **not** have a **"complete and accurate" transcript** during Petitioner's Paternity Appeal.)

24 pp

E--p.14 10/24/96	Colorado Supreme Court denies Motion for New Trial WITHOUT Prejudice to file appropriate pleading in Arapahoe County District Court
F--p.15 04/23/98	Colorado Court of Appeals denial of Appeal for a New Trial--*Unpublished Opinion*
G--p.20 08/13/98	Colorado Court of Appeals denied Rehearing for a New Trial--**J. Jones WOULD GRANT**
H--p.21 08/27/98	Colorado Court of Appeals **Vacated** its denial of Rehearing for a New Trial
I--p.22 11/19/98	Colorado Court of Appeals Modified and denied Rehearing for a New Trial
J--p.23 04/12/99	Colorado Supreme Court denies New Trial Writ
K--p.24 04/30/99	Colorado Supreme Court denies Rehearing

APPENDIX A--DENIAL THAT WALT CHAPPELL IS THE LEGAL FATHER OF HIS BIOLOGICAL SON

COLORADO COURT OF APPEALS
October 12, 1995
No. 91CA1628

W.C., Petitioner-Appellant,

In the Interest of A.M.K., a Child,
and Concerning R.K., Respondent-Appellee

Appeal from the District Court of Arapahoe County
Honorable Joyce Steinhardt, Judge
Honorable John Leopold, Judge
No. 89JV377

Division V JUDGMENT AFFIRMED
Opinion by JUDGE ROY
Davidson and Casebolt, JJ., concur

W.C., Pro Se

Allen, Rogers, Metcalf & Vahrenwald, Russell B. Sanford,
Fort Collins, Colorado, for Respondent-Appellee

Petitioner, W.C., appeals from the judgment of the trial court denying his claim to a parent and child legal relationship between himself and A.M.K., his biological son (child).

Petitioner also challenges the trial court's finding of, and its refusal to terminate, a parent and child relationship between child and respondent, R. K. (husband), who was married to child's natural mother at the time of child's conception and birth. He also appeals the trial court's award of costs and attorney fees.

We affirm.

Child was born January 22, 1982, to mother while she was married to husband. During mother's pregnancy, both mother and petitioner suspected that petitioner was child's biological father as they had engaged in sexual intercourse near the time of conception. Both petitioner and husband were called to the hospital at the time of birth. After the birth of child, petitioner did not claim paternity and no proceeding was commenced by either mother or any other interested person to establish his paternity.

Husband believed that he was child's father, held child out to the public as his child, and had his name placed on child's birth certificate. The marriage between mother and husband was subsequently dissolved in April 1984 in a proceeding in which the child was alleged to be an issue of the marriage. Mother and husband entered into a written separation agreement which was incorporated into the decree and required husband to support child and to provide child's health insurance. The agreement also provided for regular visitation between husband and child, which husband has continually exercised.

Petitioner did not take any action to claim paternity until the fall of 1988, six years after child's birth. Then, at petitioner's suggestion, he, mother, and child voluntarily submitted to blood tests, the results of which indicated a probability above 97% that petitioner was child's biological father. In March 1989, petitioner instituted this action.

After a three-day hearing, the trial court entered a judgment holding that there was a parent and child legal relationship between husband and child. The court found that petitioner was child's biological father, but that it was in child's best interests to continue the parent and child relationship between husband and child. This appeal followed.

I.

At the outset, and contrary to husband's contention, we conclude that petitioner's claim is not barred by the five-year statute of limitations now contained in §19-4-107(1)(b), C.R.S. (1995 Cum. Supp.).

Section 19-4-107(1) (b) is a statute of limitations applicable to actions brought by the child, the mother, a man who is presumed to be the father by virtue of §l9-4-105(1)(a), (l)(b) and (l)(c), C.R.S. (1995 Cum. Supp.), and certain governmental agencies to declare the nonexistence of a father and child relationship presumed to exist by virtue of §19-4-105(1) (a), (1) (b) and (1) (c). These fatherhood presumptions relate to a man who was married to the child's mother at the time of the child's birth; or who, together with other acts or circumstances, attempted a solemnized marriage with the child's mother either prior to or following the birth of the child which is or could be declared invalid.

Petitioner is not a person or entity to whom or to which the five—year limitation applies. More particularly, petitioner is not a man whose fatherhood is presumed pursuant to Colo. Sess. Laws 1987, ch. 138, §19-4-105(1)(a), (1)(b), or (l)(c).

Petitioner claims a presumed status pursuant to §19-4-105(1) (f) in that the result of blood tests do not exclude him as a probable father and the probability of his parentage is 97% or greater. Petitioner is, therefore, an "interested party" who can commence an action to establish a father and child relationship at any time prior to the child's eighteenth birthday. Colo. Sess. Laws 1987, ch. 138, §19-4-107(2); and Colo. Sess. Laws 1987, ch. 138, §19-4-108.

Husband asserts that, before petitioner can establish his own parent and child relationship by virtue of a presumption, petitioner must first obtain an order declaring the nonexistence of his presumed parent and child relationship. Therefore, petitioner's action is subject to the five-year limitation of §19-4-107(1)(b) and is barred. We disagree.

The five-year statute relates to actions to declare the nonexistence of the father and child relationship by a man who is a presumed father by virtue of marriage or attempted marriage. The Uniform Parentage Act does not require that one man's presumed paternity by marriage or attempted marriage be disestablished before an action to assert a parent and child legal relationship by another man based on a different presumption or basis can be commenced. Indeed, §19-4-105(2) specifically contemplates that a child may have more than one presumed father and provides criteria for determining which of two presumed fathers will have a parent and child relationship without elevating one presumption over the other.

Husband relies in part on M.R.D. v. F.M., 805 P.2d 1200 (Colo. App. 1991), in which, a division of this court held that the five-year statute barred an action by the mother and presumed father by marriage to establish a parent and child relationship between the child and the biological father. The court reasoned that the presumed father by marriage must first disestablish his own status before he could assert the presumed status of the biological father. In this instance, however, the presumed biological father is attempting to assert his own paternity, not that of another, and he is not, as was the case in M.R.D., attempting to avoid the five-year limitation or the strong presumption in favor of legitimacy. See R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Husband's reliance on People in Interest of M.P.R., 723 P.2d 743 (Colo. App. 1986) is, in our view, misplaced. In M.P.R., the biological father commenced a proceeding eleven months after birth of a child who also had a presumed father

by marriage. The court held that eleven months was a reasonable time under what is now §19-4-107(l)(b). To the extent, if any, that case held that actions initiated by biological fathers to establish their parent and child relationship are limited by §19-4-107(1)(b), we disagree with the analysis and decline to follow it.

II.

Petitioner argues that the trial court erred in retaining the parent and child relationship between child and husband. We perceive no error.

The trial court found petitioner was a presumed father of the child pursuant to Colo., Sess. Laws 1987, ch. 138, §19-4-105(1)(f) and §13-25-126, C.R.S. (1987 Repl. Vol. 6A), i.e., he was the biological father. The court also found that husband was a presumed father by virtue of Colo. Sess. Laws 1987, ch. 138, §19-4-105(1) (a), i.e., he was married to the natural mother at the time of birth, and by virtue of Colo. Sess. Laws 1987, ch. 138, §19-4-105(1)(e), i.e., he had acknowledged his paternity.

The trial court then, in our view, correctly applied §19-4-105(2), C.R.S. (1995 Cum. Supp.), which provides:

> A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man. (emphasis added)

The trial court in its paternity order made a number of findings of fact with record support before concluding that the parent and child relationship between husband and child should continue.

The child, who was nine at the time of the paternity order, was tentatively diagnosed as suffering from attention

deficit disorder and hyperactivity. Experts testified that the boy was immature and not ready to hear that the man whom he believed to be his father, in fact, was not. And, the trial court noted the dire consequences to the child if he were so told.

Mother testified that she did not have any long-term relationship with petitioner. Further, the trial court found that the child had bonded with his mother and husband and that it should not tamper with those relationships.

The trial court noted that, at the request of husband, the child's birth certificate lists husband as the father. It further noted that paternity, though not contested, was an issue in the dissolution of marriage proceedings between mother and husband and that the decree found the child to have been born as an issue of the marriage and entered appropriate support and visitation orders.

The public policy of Colorado favors legitimacy. See R. McG. v. J.W., supra. That policy is expressed in the presumption of paternity accorded to a man married to the mother at the time of the child's birth. See §19-4-105(1) (a); M.R.D. v. F.M., supra; People in Interest of S.L.H., 736 P.2d 1226 (Colo. App.1986). Among the reasons for favoring legitimacy are the dire consequences to the child involved in changing the father and child relationship. People in Interest of S.L.H., supra.

Under the facts as found by the trial court and because of the public policy favoring legitimacy, we find that the trial court did not abuse its discretion in continuing the parent and child relationship between child and husband. The court's ruling was not manifestly arbitrary, unreasonable, or unfair. See generally People v. Milton, 732 P.2d 1199 (Colo. 1987).

III.

Petitioner next argues that he was denied equal protection of the laws, but he has provided neither convincing legal authority nor argument in support of this assertion. See Biel v. Alcott, 876 P.2d 60 (Colo. App. 1993). We, therefore, do not address it.

IV.

Petitioner also argues that he was denied due process of law because he was not made a party to the 1982 child support proceeding commenced by the Boulder County Department of Social Services against husband, seeking reimbursement of funds contributed to the support of the child. We disagree.

While petitioner does not state why this argument is germane to his claim, it appears that he wishes to avoid the implications of the last sentence of §19-4-105(2), which provides that "[t]he presumption is rebutted by a court decree establishing paternity of the child by another man." In making this argument, petitioner ignores the decree of dissolution of marriage entered February 8, 1983, to the same effect, having arguably the same import, and which was relied upon by the trial court.

From our review of the trial court's order, it did not rely on the 1982 child support proceeding in reaching its findings, conclusions, and order. Therefore, we need not address the issue further.

V.

Petitioner also appeals the trial court's denial of his summary judgment motion under C.R.C.P. 56 to establish a parent and child relationship between himself and the child. We see no merit in this contention.

Under C.A.R. 1, subject to exceptions not here present, this court may review only final judgments. Under the circumstances present here, a party may not appeal the denial of a summary judgment motion, particularly when the case goes to trial after denial of the motion, because it is an unappealable interlocutory ruling and not a final judgment. Manuel v. Fort Collins Newspapers, Inc., 631 P.2d 1114 (Colo. 1981); cf. Jones v. Feiger, P.2d (Colo. App. No. 93CA1709, December 29, 1994)

VI.

Lastly, petitioner appeals the trial court's order regarding attorney fees. We find no merit in his contentions.

Under the Uniform Parentage Act, the trial court is required to order that the parties pay the reasonable fees of counsel, experts, and the guardian ad litem. The court determines in what proportion the parties are to pay those fees. Section 19-4-117, C.R.S. (1995 Cum. Supp.).

Generally, this court will not disturb the trial court's determination of attorney fees in paternity cases unless the court clearly abuses its discretion. Furthermore, there need not be a showing of bad faith to award attorney fees in a paternity action. C.R.A.H.. by Pueblo County Department of Social Services v. P.M.M., 647 P.2d 239 (Colo. App. 1981).

The trial court in its order made factual findings regarding attorney fees and costs and the record amply supports its determination. Again, we find no abuse of discretion. See People v. Milton, supra.

The judgment is affirmed.

JUDGE DAVIDSON and JUDGE CASEBOLT concur.

APPENDIX B--PATERNITY REHEARING DENIED

THE COURT OF APPEALS OF THE STATE OF COLORADO

Case Number 91CA1628

ORDER

W.C. IN THE INTEREST OF A.M.K. ET AL

Upon consideration of the Petition for Rehearing filed by the Appellant herein, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed to and including February 12, 1996, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT:

Roy, J.
Davidson, J.
Casebolt, J.

DATED: January 11, 1996

APPENDIX C--PATERNITY WRIT DENIED

SUPREME COURT, STATE OF COLORADO
CASE NO. 96SC77
CERTIORARI TO THE COLORADO COURT OF APPEALS, 91CA1628
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W. C.	Petitioner
In re the Interest of A.M.K.	Minor Child
vs.	
L.M. and R.K.	Respondents

Upon consideration of the Petition and Cross-Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals, IT IS THIS DAY ORDERED that said Petition and Cross Petition for Writ of Certiorari shall be, and same hereby are, DENIED.

BY THE COURT, EN BANC, JULY 29, 1996.
CHIEF JUSTICE VOLLACK does not participate.

cc
Walt Chappell, Ph.D.
P.O. Box 776
Wichita, Kansas 67201

Russell B. Sanford
Robert Kabat
Box 608
Ft. Collins, CO 80522

APPENDIX D--COURT REPORTER TAMPERED WITH TRIAL TRANSCRIPT ON APPEAL

OFFICE OF

DISTRICT ATTORNEY

ROBERT R. GALLAGHER~ JR.
DISTRICT ATTORNEY
ROGER H. ALLOTT
ASST. DISTRICT ATTORNEY

18th JUDICIAL DISTRICT
7305 S. Potomac St. STE 300
Englewood, CO 80112-4031
(303)643-4500(P) 643-4501(F)

October 1, 1996

Dr. Walt Chappell
P.O. Box 776
Wichita, KS 67201

Re: Investigation of Tampering with Evidence concerning:
Arapahoe District Court Case 89 JV 377
Colorado Court of Appeals Case 91 CA 1628
Supreme Court 96 SC 77

Dear Dr. Chappell:

Through our investigation of your complaint we have developed evidence to believe that the crime of Tampering with Evidence was committed by former Court Reporter Sandra Kay Noblitt in her preparation of transcripts that were submitted to the Colorado Court of Appeals in Arapahoe District Court case number 89JV377.

This case remains under investigation at this time and determination of filing of criminal charges will be decided after the investigation has been completed.

If you should have any questions regarding your complaint filed in this matter, please feel free to contact me at 303-643-4500.

Very truly yours,

Karen Meskis
Senior Investigator

APPENDIX E---DENIAL WITHOUT PREJUDICE OF MOTION FOR A NEW TRIAL, DATED OCTOBER 24, 1996

SUPREME COURT, STATE OF COLORADO
CASE NO. 96SC77
CERTIORARI TO THE COLORADO COURT OF APPEALS, 91CA1628
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C.	Petitioner
In Interest of	A.M.K., Minor Child
v.	
L.M. and R.K.	Respondents

Upon consideration of Petitioner-Appellant's Motion for a New Trial in Arapahoe County District Court filed in the above case, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion be, and the same hereby is, DENIED without prejudice with leave to file appropriate pleading in Arapahoe County District Court.

BY THE COURT, EN BANC, OCTOBER 24, 1996
Judge Vollack does not participate.

s/ Mac V. Danford
Clerk of the Supreme Court

APPENDIX F--DENIAL OF APPEAL FOR A NEW TRIAL

COLORADO COURT OF APPEALS April 23, 1998
No. 97 CA 0666 **NOT SELECTED FOR PUBLICATION**

W.C.	Petitioner-Appellant
In Interest of A.M.K.	A Child
and Concerning R.K.	Respondent-Appellee

Appeal from the District Court of Arapahoe County
Honorable Kenneth K. Stuart, Judge
No. 89CV377

Division II
ORDER AFFIRMED
Opinion by JUDGE CRISWELL
Jones and Taubman, JJ., concur

Allen, Vahrenwald & Johnson, LLC, Russell B. Sanford, Fort Collins, Colorado, for Respondent-Appellee R.K.

In this paternity proceeding, petitioner, W.C., appeals from an order of the trial court denying his post-trial motion seeking a new trial.
We affirm.

In July 1991, after a three-day evidentiary hearing at which petitioner testified and presented other witnesses on his behalf, the trial court entered its order determining that, while petitioner was the biological father of the child who was the subject of this action, it was in that child's best interest that the presumed father, who was married to the child's mother at the time of the birth and who had entered into a continuing parent-child relationship with him, be recognized as the child's father.

Petitioner appealed from that order and a record on appeal was prepared and lodged with this court. However, petitioner complained that the record presented was incomplete. As a result, on two occasions, orders of remand to the trial court were entered for the preparation of any part of the record in the trial court that had not been included in the initial record. Later, the trial court ultimately forwarded an additional reporter's transcript of testimony, containing in excess of 200 pages, that had not been included within the initial record.

Upon receipt of this additional transcript, a division of this court reviewed the record before it, and based upon that review, it affirmed the trial court's judgment. One of the grounds relied upon by the division was that the record supported the trial court's factual determinations. W.C. in Interest of A.M.K., 907 P.2d 719 (Colo. App. 1995).

After that opinion was issued, however, petitioner filed his motion for a new trial with the trial court. In conjunction with its review of that motion, the trial court had the notes of the original court reporter, who was no longer employed by the trial court and who was unavailable to review or to transcribe her notes, reviewed by other court reporters. This review led to the discovery that there had been substantial testimony taken by the trial court in the original

hearing that had not before been transcribed and which had, therefore, not been made a part either of the initial record on appeal or of the supplement later forwarded to this court. Such testimony, therefore, had not been considered by the division that had rendered the opinion in W.C. in Interest of A.M.K., supra.

This additional evidence consisted of a large portion of petitioner's testimony, as well as the testimony of an expert witness who testified on his behalf. Based upon its review of this new transcript, however, the trial court concluded that its absence was not prejudicial to petitioner and that, had it been included within the previous record provided to this court, its presence would not have changed the result reached in petitioner's previous appeal. Hence, the trial court denied petitioner's motion for new trial from which denial petitioner is prosecuting the instant appeal.

I.

While petitioner's motion referred to the grounds for a new trial described in C.R.C.P. 59(d)(1), (3), and (4), if petitioner's motion is treated as one filed under that rule, it would be untimely. See C.R.C.P. 59(a); Schuster v. Zwicker 659 P.2d 687 (Colo. 1983)

However, the trial court treated petitioner's motion as one filed under C.R.C.P. 60(b) and addressed the merits of his contentions. We shall do likewise.

II.

We have conducted our own independent review of the newly transcribed testimony. That review convinces us that, contrary to petitioner's assertion, the failure to include a transcript of this testimony in the prior record on appeal did not prejudice him.

A complete transcript is not an absolute necessity in the reviewing court. Almarez V. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970) . If the transcript presented permits review of the dispositive issues on appeal, the record is sufficient even if it is incomplete. Goodwill Industries v. Industrial Claim Appeals office, 862 P.2d 1042 (Colo. 1993)

Here, as the trial court noted, that court had heard and considered all of the testimony that was presented to it, including that portion of the testimony that has only recently been transcribed. Indeed, the trial court's initial decision makes clear that it had considered petitioner's evidence, but had rejected substantial portions of it on credibility grounds.

It might reasonably be concluded that some of the evidence in the new transcript contradicts evidence relied upon by the trial court in reaching its initial decision. However, even if the discovered portion of the transcript is contradictory of other evidence in the record, that evidence is not such that it would, as a matter of law, have required the trial court to reach an opposite conclusion. At most, it created a conflict either in the evidence before that court or in the reasonable inferences to be drawn from the evidence. In either case, the resolution of any conflict is for the trial court. People in Interest of M.S.H. 656 P.2d 1294 (Colo. 1983)

An appellate court has authority to review a trial court's findings only to the extent necessary to ascertain whether there is some evidence, albeit disputed, that supports those findings. If so, the appellate court must affirm the trial court's determination. Gebhardt v. Gebhardt, 198 Colo. 28, 595 P.2d 1048 (1979)

Here, in petitioner's former appeal, it was determined that there was evidence in the record to support the trial court's paternity determination. That evidence remains. Hence, even if there were found to be evidence in the newly prepared transcript that conflicted with the evidence relied upon by the trial court, such conclusion could not serve as the basis for a reversal of the trial court's determination.

In short, we agree with the trial court's most recent conclusion that, while the failure of the original court reporter to prepare a proper and complete transcript of the hearing was not only regrettable, but indeed irresponsible, that failure was not prejudicial to petitioner -- the result of petitioner's first appeal would have been the same even if the total transcript had been included within the original record on appeal.

III.

Petitioner also contends that a new trial is warranted because (1) he was surprised by a motion to exclude his witnesses made on the first day of trial; (2) the trial court was biased against him, engaged in ex-parte communications with the respondents, and denied his motion to recuse, thereby depriving him of a fair trial; (3) the respondents' withholding of the results of R.K.'s blood tests for more than a year was a fraud on the court; (4) the child's complete school record and mother's custody evaluation, which were admitted into evidence and/or contained in the court's file, but were not reviewed by him until after the trial, constitute newly discovered evidence; and (5) the trial court's denial of his request to present rebuttal evidence constitutes a fraud on the court. Again, we disagree.

To the extent that his motion alleged grounds for relief under C.R.C.P. 60(b) (1) and 60(b) (2), it is untimely. See Southeastern Colorado Water Conservancy District v. Cache Creek Mining Trust, 854 P.2d 167 (Colo. 1993)

Further, all of the foregoing allegations concern matters which shou1d have been discovered and raised in petitioner's initial appeal on the merits. Hence, they cannot constitute grounds for post-judgment relief.

IV.

Finally, we decline to address petitioner's assertions with respect to the trial court's application of §19-4-105, C.R.S. 1997, its order denying his motion for summary judgment, and its order regarding attorney fees. These issues were fully addressed and resolved by this court in the previous appeal. See W.C. in Interest of A.M.K., supra.

V.

Lastly, we disagree with the contention that the instant appeal is frivolous and groundless. Therefore, we deny the request to impose sanctions upon petitioner pursuant to C.A.R. 38(d)

The order is affirmed. JUDGE JONES and JUDGE TAUBMAN concur.

APPENDIX G--DENIAL OF NEW TRIAL--J. JONES WOULD GRANT

THE COURT OF APPEALS OF THE
STATE OF COLORADO
Case Number 97CA666

ORDER

W.C. in the Interest of A.M.K. v. R.K.

Upon consideration of the Petition for Rehearing filed by the Petitioner/Appellant herein, the Petition is hereby DENIED. JUDGE JONES WOULD GRANT.

It is ordered that issuance of the Mandate is stayed to and including SEPTEMBER 14, 1998, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

DATED: AUGUST 13, 1998

BY THE COURT:
Criswell, J.
Jones, J.
Taubman, J.

APPENDIX H---VACATE THE DENIAL OF PETITION FOR REHEARING OF NEW TRIAL MOTION, DATED AUGUST 27, 1998

COLORADO COURT OF APPEALS, 97CA0666
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C. Petitioner

In Interest of A.M.K., Minor Child

v.

L.M. and R.K. Respondents

The order denying Petitioner's Petition for Rehearing, dated August 13, 1998, was issued inadvertently and without full consideration by the division.

Hence, that order of denial is **HEREBY VACATED** and a new order respecting this subject shall issue in due course.

Dated this 27th day of August, 1998.

BY THE COURT:

Criswell, J.
Jones, J.
Taubman, J.

APPENDIX I---DENIAL OF PETITION FOR REHEARING, DATED NOVEMBER 19, 1998

THE COURT OF APPEALS OF THE STATE OF COLORADO

Case Number 98CA0666

ORDER

W.C. IN THE INTEREST OF A.M.K.,

Upon consideration of the Petition for Rehearing filed by the Petitioner-Appellant Modified and as Modified, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed to and including December 21, 1998 provided that if a petition for Writ of Certiorari is timely filed with the Supreme court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT:

Criswell, J.
Jones, J.
Taubman, J.

Dated: November 19, 1998

APPENDIX J---DENIAL OF PETITION FOR WRIT OF CERTIORARI, DATED APRIL 12, 1999

SUPREME COURT, STATE OF COLORADO
CASE NO. 98SC870
CERTIORARI TO THE COLORADO COURT OF APPEALS, 97CA0666
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C. Petitioner

In Interest of A.M.K., Minor Child

v.

L.M. and R.K. Respondents

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petitioner for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, APRIL 12, 1999

s/ Mac V. Danford
Clerk of the Supreme Court

APPENDIX K---DENIAL OF MOTION TO RECONSIDER, DATED APRIL 30, 1999

SUPREME COURT, STATE OF COLORADO
CASE NO. 98SC870
CERTIORARI TO THE COLORADO COURT OF APPEALS, 97CA0666
DISTRICT COURT, ARAPAHOE COUNTY, 89JV377

ORDER OF COURT

W.C.	Petitioner
In Interest of	A.M.K., Minor Child
v.	
L.M. and R.K.	Respondents

Upon consideration of the Motion to Reconsider filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, DENIED.

BY THE COURT, APRIL 30, 1999

s/ Mac V. Danford
Clerk of the Supreme Court